

HOUSE SUBSTITUTE

FOR

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 34

AN ACT

2 To repeal sections 188.010, 188.015, 188.052,
3 188.055, 188.070, and 188.075, RSMo, and to
4 enact in lieu thereof ten new sections
5 relating to informed consent for abortion,
6 with penalty provisions.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
8 AS FOLLOWS:

9 Section A. Sections 188.010, 188.015, 188.052, 188.055,
10 188.070, and 188.075, RSMo, are repealed and ten new sections
11 enacted in lieu thereof, to be known as sections 188.010,
12 188.015, 188.052, 188.055, 188.070, 188.075, 188.180, 188.185,
13 188.250, and 188.300, to read as follows:

14 188.010. It is the intention of the general assembly of the
15 state of Missouri to **[grant]** recognize and affirm the right to
16 life to all humans, born and unborn, to protect maternal health,
17 to promote alternatives to abortion, and to regulate abortion to
18 the full extent permitted by the Constitution of the United
19 States, decisions of the United States Supreme Court, and federal
20 statutes.

21 188.015. **[Unless the language or context clearly indicates**

1 a different meaning is intended, the following words or phrases
2 for the purposes of sections 188.010 to 188.130 shall be given
3 the meaning ascribed to them] As used in this chapter, the
4 following terms mean:

5 (1) "Abortion", the intentional destruction of the life of
6 an embryo or fetus in his or her mother's womb or the intentional
7 termination of the pregnancy of a mother with an intention other
8 than to increase the probability of a live birth or to remove a
9 dead or dying unborn child;

10 (2) "Abortion facility", a clinic, physician's office, or
11 any other place or facility in which abortions are performed or
12 induced other than a hospital;

13 (3) "Alternatives to abortion agency" or "alternatives to
14 abortion agencies", an agency or agencies located in this state
15 established and operating primarily to offer alternatives to
16 abortion services, including agencies commonly known and referred
17 to as crisis pregnancy centers, pregnancy resource centers and
18 maternity homes, and which does not perform, induce, or refer for
19 abortions or hold itself out as performing, inducing, or
20 referring for abortions, and which if it is a private agency is
21 exempt from income taxation pursuant to the United States
22 Internal Revenue Code of 1986, as amended;

23 (4) "Alternatives to abortion services", services or
24 counseling offered to a pregnant woman to assist her in carrying
25 her unborn child to term instead of having an abortion, and to

1 assist her in caring for her dependent child or placing her child
2 for adoption;

3 (5) "Conception", the fertilization of the ovum of a female
4 by a sperm of a male;

5 (6) "Department", the department of health and senior
6 services;

7 [(4)] (7) "Gestational age", length of pregnancy as
8 measured from the first day of the woman's last menstrual period;

9 (8) "Medical emergency", a condition which, on the basis of
10 a physician's good faith clinical judgment, so complicates the
11 medical condition of a pregnant woman as to necessitate the
12 immediate abortion of her pregnancy to avert the death of the
13 pregnant woman or for which a delay will create a serious risk of
14 substantial and irreversible impairment of a major bodily
15 function of the pregnant woman;

16 [(5)] (9) "Physician", any person licensed to practice
17 medicine in this state by the state board of registration of the
18 healing arts;

19 [(6)] (10) "Unborn child", the offspring of human beings
20 from the moment of conception until birth and at every stage of
21 its biological development, including the human conceptus,
22 zygote, morula, blastocyst, embryo, and fetus;

23 [(7)] (11) "Viability", that stage of fetal development
24 when the life of the unborn child may be continued indefinitely
25 outside the womb by natural or artificial life-supportive

1 systems.

2 188.052. 1. An individual abortion report for each
3 abortion performed or induced upon a woman shall be completed by
4 her attending physician. The report shall include:

5 (1) Information required by the United States Standard
6 Report of Induced Termination of Pregnancy, published by the
7 National Center for Health Statistics, Centers for Disease
8 Control and Prevention, United States Department of Health and
9 Human Services, or its successor publication or agency;

10 (2) Additional information on the type of abortion
11 procedure used, including the specific surgical or nonsurgical
12 method or the specific abortion-inducing drug or drugs employed,
13 including but not limited to vacuum aspiration, suction
14 curettage, sharp curettage, dilation and evacuation or "D&E",
15 intact D&E, dilation and extraction or "D&X", intrauterine saline
16 instillation, intrauterine prostaglandin instillation,
17 hysterotomy, methotrexate, mifepristone, or misoprostol;

18 (3) The reason or reasons the woman sought the abortion,
19 including specific medical, social, economic, or other factors,
20 including but not limited to particular maternal health
21 conditions, pregnancy resulting from rape or incest, does not
22 want others to know of her pregnancy, others object to her
23 pregnancy, has relationship problems with the father of the child
24 or other family members, lack of financial support from the
25 father of the child, disruption of education or job, or desire to

1 limit family size; and

2 (4) Whether the woman used any method of family planning
3 during the time she became pregnant, and if so, the specific
4 method employed.

5 2. An individual complication report for any post-abortion
6 care performed or induced upon a woman shall be completed by the
7 physician providing such post-abortion care. This report shall
8 include but not be limited to:

9 (1) The date of the abortion;

10 (2) The name and address of the abortion facility or
11 hospital where the abortion was performed or induced;

12 (3) The nature of the abortion complication diagnosed or
13 treated.

14 3. All abortion reports shall be signed by the attending
15 physician, and submitted to the [state] department [of health and
16 senior services] within forty-five days from the date of the
17 abortion. All complication reports shall be signed by the
18 physician providing the post-abortion care and submitted to the
19 department [of health and senior services] within forty-five days
20 from the date of the post-abortion care.

21 4. A copy of the abortion report shall be made a part of
22 the medical record of the patient of the facility or hospital in
23 which the abortion was performed or induced.

24 5. The [state] department [of health and senior services]
25 shall be responsible for collecting all abortion reports and

1 complication reports and collating and evaluating all data
2 gathered therefrom and shall annually publish a statistical
3 report based on such data from abortions performed or induced and
4 post-abortion care provided in the previous calendar year. The
5 report shall specify the gestational age, by weekly increments,
6 at which abortions were performed or induced. The report shall
7 not include any information that would allow the public to
8 identify a specific:

9 (1) Patient who obtained an abortion or who received post-
10 abortion care;

11 (2) Physician who performed or induced an abortion or who
12 provided post-abortion care; or

13 (3) Hospital or abortion facility where the abortion was
14 performed or induced or which provided post-abortion care.

15 6. The information provided by the woman shall be
16 voluntarily provided by the woman seeking or obtaining the
17 abortion, but the abortion facility, hospital, or physician shall
18 make all reasonable efforts to collect the information required
19 by this section, and shall in no way dissuade or discourage the
20 woman from providing the information required by this section.

21 188.055. 1. Every abortion facility, hospital, and
22 physician shall be supplied with forms by the department [of
23 health and senior services] for use in regards to the consents
24 and reports required by sections 188.010 to 188.085. A purpose
25 and function of such consents and reports shall be the

1 preservation of maternal health and life by adding to the sum of
2 medical knowledge through the compilation of relevant maternal
3 health and life data and to monitor all abortions performed or
4 induced to assure that they are done only under and in accordance
5 with the provisions of the law.

6 2. All information obtained by physician, hospital, or
7 abortion facility from a patient for the purpose of preparing
8 reports to the department [of health and senior services] under
9 sections 188.010 to 188.085 or reports received by the [division
10 of health] department shall be confidential and shall be used
11 only for statistical purposes. Such records, however, may be
12 inspected and health data acquired by local, state, or national
13 public health officers.

14 188.070. Any [physician or other] person who [fails to
15 maintain] knowingly violates the confidentiality of any records
16 [or], reports [required], or documents maintained by the abortion
17 facility or hospital or received by the department under sections
18 188.010 to 188.085 is guilty of a [misdemeanor and, upon
19 conviction, shall be punished as provided by law] class D felony.

20 188.075. 1. Any person who contrary to the provisions of
21 sections 188.010 to 188.085 knowingly performs, induces, or aids
22 in the performance or inducing of any abortion or knowingly fails
23 to perform any action required by sections 188.010 to 188.085
24 [shall be] is, unless a different penalty is provided for in a
25 section, guilty of a class A misdemeanor and, upon conviction,

1 shall be punished as provided by law.

2 2. It shall be a defense for any person alleged to have
3 violated any provision of this chapter that the person performed
4 an action or did not perform an action because of a medical
5 emergency. This defense shall be available in criminal, civil,
6 and administrative actions or proceedings. The defendant shall
7 have the burden of injecting the issue of medical emergency as a
8 defense.

9 188.180. 1. Except in the case of a medical emergency, the
10 attending physician who is to perform or induce an abortion or a
11 referring physician, or other qualified agent of either physician
12 under the physician's supervision to whom the responsibility has
13 been delegated by the physician, including but not limited to a
14 nurse, physician assistant, or social worker, shall provide
15 geographically indexed educational materials prepared by the
16 department pursuant to section 188.185 that are designed to
17 inform the woman of alternatives to abortion services. The
18 physician or the qualified agent of the physician actually
19 providing such materials shall sign, and shall cause the patient
20 to sign after receiving such materials, a written statement
21 certifying that such materials have been delivered to and
22 received by the patient. If the patient chooses to proceed with
23 the abortion, all such executed statements shall be maintained as
24 part of the patient's medical file, subject to the
25 confidentiality laws and rules of this state.

1 2. The attending physician shall allow the patient
2 sufficient time and opportunity, prior to performing or inducing
3 the abortion, for the patient to assimilate and consider the
4 information regarding alternatives to abortion and to make a
5 decision whether to proceed with the abortion or to carry her
6 unborn child to term.

7 3. The physician shall be civilly liable to the patient and
8 any other person sustaining loss, injury, or damages caused by
9 the failure to comply with the provisions of this section. A
10 court can enter any other appropriate relief, including
11 injunctive relief, in order to prevent violations of this
12 section. A physician who has been found to have violated the
13 provisions of this section, whether or not damages are awarded,
14 or who settles any claim or cause of action based upon the
15 physician's violation of this section, shall be subject to
16 discipline of the physician's license, certificate, or permit to
17 practice medicine.

18 188.185. 1. The department shall develop geographically
19 indexed educational materials, including but not limited to
20 brochures and other media, about positive options during
21 pregnancy and alternatives to abortion, including but not limited
22 to the following:

23 (1) Alternatives to abortion agencies;

24 (2) Alternatives to abortion services and other services
25 available to mothers of newborn children offered either directly

1 by the state or its political subdivisions or by contractors with
2 the state or its political subdivisions, or by private community-
3 based programs, including but not limited to prenatal care;
4 medical and mental health care; parenting skills; drug and
5 alcohol testing and treatment; child care; newborn or infant
6 care; housing; utilities; educational services; food, clothing
7 and supplies relating to pregnancy, newborn care and parenting;
8 adoption assistance; job training and placement; establishing and
9 promoting responsible paternity; domestic abuse protection; and
10 transportation.

11 3. The materials shall include a comprehensive list of the
12 agencies providing such alternatives to abortion services, a
13 description of the services offered by each agency, and the
14 addresses and telephone numbers of each agency. The list shall
15 not include any agency which performs, induces, or refers for
16 abortion or which holds itself out as performing, inducing, or
17 referring for abortions. The following statement shall be
18 prominently placed within such materials: "There are many public
19 and private agencies willing and able to help you to carry your
20 child to term, and to assist you and your child after your child
21 is born, whether you choose to keep your child or place him or
22 her for adoption. The State of Missouri strongly urges you to
23 contact those agencies before making a final decision about
24 abortion. State law requires that your physician or his or her
25 agent give you the opportunity to contact agencies like these

1 before you undergo an abortion."

2 4. The department shall publicly solicit alternatives to
3 abortion agencies and other public and private agencies providing
4 alternatives to abortion services to provide information to the
5 department about the agency and the services rendered by the
6 agency. The department may utilize already existing lists of
7 agencies providing alternatives to abortion services within the
8 state in preparing the materials required by this section,
9 including information collected pursuant to the adoption
10 awareness law in section 191.975, RSMo.

11 5. The materials shall be distributed by the department to
12 family planning clinics, abortion facilities, hospitals where
13 abortions are performed or induced, and physicians who perform or
14 induce abortions. Such materials shall also be available to the
15 public through the department's Internet web site.

16 188.250. 1. No person shall intentionally cause, aid, or
17 assist a minor to obtain an abortion without the consent or
18 consents required by section 188.028.

19 2. Any person who violates subsection 1 of this section
20 shall be civilly liable to the minor and to the person or persons
21 required to give the consent or consents pursuant to section
22 188.028. A court may award damages, attorney's fees, and court
23 costs to any person adversely affected by a violation of this
24 section.

25 3. It shall not be a defense to a claim brought pursuant to

1 this section that the abortion was performed or induced pursuant
2 to consent to the abortion given in a lawful manner in the state
3 or place where the abortion was performed or induced.

4 4. An unemancipated minor does not have capacity to consent
5 to any action in violation of this section or section 188.028.

6 5. A court may enjoin conduct that would be in violation of
7 this section upon petition by the attorney general, a prosecuting
8 or circuit attorney, or any person adversely affected or who
9 reasonably may be adversely affected by such conduct, upon a
10 showing that such conduct:

11 (1) Is reasonably anticipated to occur in the future; or

12 (2) Has occurred in the past and that it is not
13 unreasonable to expect that under similar circumstances such
14 conduct will be repeated.

15 188.300. Any individual aggrieved by a violation of a
16 provision of this chapter relating to confidentiality of medical
17 records may, if a civil remedy is not otherwise provided for by
18 law, bring a civil action for damages. If it is found in a civil
19 action that:

20 (1) A person has negligently violated the provision, the
21 person is liable for each violation for:

22 (a) The greater of actual damages or liquidated damages of
23 one thousand dollars; and

24 (b) Court costs and reasonable attorney's fees incurred by
25 the person bringing the action; and

1 (c) Such other relief, including injunctive relief, as the
2 court may deem appropriate; or

3 (2) A person has willfully or intentionally or recklessly
4 violated the provision, the person is liable for each violation
5 for:

6 (a) The greater of actual damages or liquidated damages of
7 five thousand dollars; and

8 (b) Exemplary damages; and

9 (c) Court costs and reasonable attorney's fees incurred by
10 the person bringing the action; and

11 (d) Such other relief, including injunctive relief, as the
12 court may deem appropriate.

13 2. The remedies available pursuant to this section are
14 cumulative and in addition to any other criminal or
15 administrative penalties otherwise provided for by law.